

Diverse Groups Urge Steps to Reduce Federal Prison Population and Expenditures

March 5, 2013

The Honorable Barbara A. Mikulski
Committee on Appropriations
United States Senate
Washington, D.C.

The Honorable Harold Rogers
Committee on Appropriations
U.S. House of Representatives
Washington, D.C.

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C.

The Honorable Bob Goodlatte
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.

The Honorable Richard C. Shelby
Committee on Appropriations
United States Senate
Washington, D.C.

The Honorable Nita M. Lowey
Committee on Appropriations
U.S. House of Representatives
Washington, D.C.

The Honorable Chuck Grassley
Committee on the Judiciary
United States Senate
Washington, D.C.

The Honorable John Conyers, Jr.
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.

Dear Chairmen and Ranking Members:

Because Congress has failed to act, deep automatic spending cuts known as sequestration are beginning to take effect. As Attorney General Eric Holder recently wrote to Senate Appropriations Chairwoman Barbara Mikulski, these cuts could have “severe consequences” for our criminal justice system and our nation’s ability to ensure public safety. While our diverse organizations share General Holder’s concerns about the impact of sequestration, we recognize that budget pressures also offer an opportunity for reform. Given limited resources, we urge you to prioritize evidence-based policies and programs that would reduce the population, and the cost, of the Federal Bureau of Prisons (BOP) while ensuring public safety.

A recent report by the Congressional Research Service (CRS) found that the number of people confined under BOP’s jurisdiction has grown from about 25,000 in 1980 to nearly 219,000 in

2012 – an increase, on average, of about 6,100 individuals each year.¹ The report found that the rapid growth in the federal prison population was driven by changes in federal sentencing and correctional policy since the early 1980s. Despite disproportionate investment in prison capacity in recent decades our federal system remains severely overcrowded. Moreover, funding for BOP now makes up almost a quarter of the budget for the Department of Justice (DOJ). We simply cannot build our way out of this crisis.

In his letter, General Holder wrote that in the event of sequestration, BOP would need to “limit[] or eliminat[e] inmate programs such as drug treatment and vocational education [which] would, in fact, lead to higher costs to taxpayers and communities in the long run as the lack of such inmate re-entry training makes it less likely that released inmates will be successful at reintegration into society upon their release.” Rather than slashing BOP programs that reduce long-term costs, we believe a number of administrative and legislative options are available that could more effectively address our budget challenges while ensuring public safety.

Administrative Steps to Cut Costs While Ensuring Public Safety

We urge you to require DOJ and BOP to adopt the practices described below. None of these recommendations require new authority and all would provide offsets for other spending that would better protect public safety.

Residential Drug Abuse Treatment Program

The Department of Justice can and should expand the use of the BOP’s Residential Drug Abuse Treatment Program (RDAP). Congress mandated that the BOP make available substance abuse treatment for each person in BOP custody with a “treatable condition of substance addiction or abuse” and created an incentive for people convicted of nonviolent offenses to complete the program by authorizing a reduction of incarceration of up to one year. However, the full cost-saving benefits of RDAP are not currently being realized. For example, according to a Government Accountability Office (GAO) report that assessed the program, from 2009 to 2011 only 19% of those who qualified for a 12-month sentence reduction after completing the program received the maximum sentence reduction. On average, eligible RDAP graduates received only an eight-month reduction.² While we support the BOP’s 2013 budget request to “enhance” RDAP and allow eligible graduates to benefit from the full 12-month reduction by ensuring timely placement in the program, we also believe that the BOP can change its own policy in candidate placement by prioritizing RDAP slots for those who are eligible for a sentence reduction.

¹ Congressional Research Service, “The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options,” by Nathan James (R42937; Jan. 22, 2013).

² Government Accountability Office, Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates’ Time in Prison 13-14 (2012), available at <http://www.gao.gov/products/GAO-12-320> (hereinafter “GAO Report”).

In addition, BOP also has an opportunity to significantly expand the eligible pool benefiting from a sentence reduction and further increase savings and reduce overcrowding. For example, BOP should revise its definition of “violent offender” to exclude people whose offense involved possession of a firearm, rather than actual violence. Moreover, because BOP policy requires completion of RDAP in a community corrections facility, those with detainers are barred from residential placement and cannot benefit from RDAP’s sentence reduction. Many of those disqualified are low-level undocumented immigrants. Changing BOP policy to allow completion of RDAP by this population alone would save \$25 million each year because of reduced time in prison, according to BOP estimates.³ We are encouraged that the BOP is considering this policy change and urge you to support participation by undocumented immigrants.

Compassionate Release

Unless one of several rare exceptions applies, a court may not revisit a sentence once a conviction is finalized.⁴ One of those exceptions is when the Director of the BOP asks the court to reduce a sentence because “extraordinary and compelling” reasons warrant such a reduction.⁵ The Bureau has interpreted “extraordinary and compelling circumstances” as limited to those cases where the prisoner has a terminal illness with a life expectancy of 1 year or less or has a profoundly debilitating medical condition.⁶ In 2007, following a period of public comment, the U. S. Sentencing Commission promulgated a guideline that delineated circumstances a court considering a motion from the BOP could account for.⁷ Among the circumstances that could be considered sufficient to warrant a motion were not only terminal illness or severe and permanent medical condition, but also “the death or incapacitation of the inmate’s only family member capable of caring for the inmate’s minor child or children or any other reason determined by the Director.”⁸

The current sentence reduction authority is rarely invoked and appears to only be used only in cases of impending death or complete debilitation.⁹ We are encouraged that the President’s budget proposal last year included a commitment to “expand compassionate release criteria to people with medical conditions that have served at least 67 percent of their sentence [for non-violent offenses and no sex offenses].”¹⁰ Moreover, we were pleased by the BOP’s recent announcement that it will eliminate an administrative level of review that has sometimes delayed the processing of Compassionate Release requests. We hope you will request that the Department make clear that the authority can and should be used in cases where the prisoner has served less than 67 percent of the sentence and clarify as well the contours of “medical

3 GAO Report at 35.

4 See 18 U.S.C. § 3582.

5 See 18 U.S.C. § 3582(c)(1)(A).

6 GAO Report at 25.

7 See U.S.S.G. §1B1.13.

8 See U.S.S.G. § 1B1.13, app. note A.

9 See GAO Report, pp. 26 (only 55 cases between 2009 and 2011 granted).

10 DOJ Budget Summary.

conditions.” Additionally, we ask you to urge the Department to look beyond medical conditions and instruct that the BOP bring motions before the sentencing judge in all cases where the petitioner’s circumstances meet the criteria laid out in U.S.S.G. § 1B1.13.

Community Confinement

The BOP is obligated by law to ensure people in federal prison have an opportunity to spend a portion of time at the end of their sentences “(not to exceed 12 months) under conditions that will afford [them] a reasonable opportunity” to prepare to return to society.¹¹ The statute provides that the BOP may transfer eligible people to contract residential re-entry centers (RRCs), also called halfway houses, and, up to the lesser of 6 months or ten percent of the term of imprisonment, in home confinement for up to the one-year total that Congress directs in the Second Chance Act.¹²

The Second Chance Act sponsors understood the role that halfway houses play in the management of the federal prison population and explicitly rejected the Bureau’s alteration of policies in 2002 and 2005 limiting halfway house use, and expanded the law’s guarantee of consideration for pre-release programming from six to 12 months. The Second Chance Act specifically amended the law governing RRC transfers to instruct the BOP to ensure that placement in community corrections be “of sufficient duration to provide the greatest likelihood of successful reintegration into the community.”¹³ Stays in RRCs alone in 2010 averaged only 95 days and people released to RRCs and home detention averaged 4.5 months.¹⁴ Although the BOP has begun to give staff more discretion about how much time people must serve in halfway houses, who should be placed in a halfway house, and who may be placed directly on home confinement, much more needs to be done to ensure that people benefit from the full 12-month reentry period. While the BOP cites high costs and lack of space, the 2012 GAO report points out that the BOP failed to clarify the cost of RRC beds and home detention services and that it provided “no road map” as to how to secure this information.

The limited use of RRCs and home detention is an area where the BOP can improve the implementation of the Second Chance Act directives. Doing so will both save money and promote successful reentry and public safety. We urge you to request the status of the annual reports obliged by the Second Chance Act on the implementation of community corrections¹⁵; to ascertain up-to-date costs and savings possible under the program; to ask the BOP why its use of halfway houses and home detention has been so sparing; and determine what the BOP might need to implement the directives in the Second Chance Act.

11 18 U.S.C. § 3624(c)(1).

12 Second Chance Act of 2007, Pub. L. No. 110-199, § 251 (2008).

13 18 U.S.C. § 3624(c)(6).

14 GAO Report at 17, Tbl. 2.

15 18 U.S.C. § 3624(c)(5).

Administrative changes in these three areas would both save money and promote successful reentry and public safety. We urge you to use your influence to promote these effective proposals.

Legislative Steps Congress Can Take to Reduce Prison Costs and Ensure Safety

Last year, BOP Director Charles Samuels testified that given the number of prisoners entering the federal prison system each year, even new resources to open at least three new prison facilities would not have alleviated the dangerous overcrowded conditions within federal prisons.¹⁶ As noted above, the Congressional Research Service (CRS) recently found that the explosive growth of the federal prison population has been driven by policy changes, including increased mandatory minimum sentences, additional federal criminal offenses, and the elimination of parole. According to Director Samuels, “Drug offenders comprise the largest single offender group admitted to Federal prison and sentences for drug offenses are much longer than those for most other offense categories.”¹⁷

Thus, Administrative changes alone will not stop the unsustainable growth of our federal prison population. Congress also must act to reduce the population. We urge you to follow the lead of many state lawmakers in supporting federal sentencing reforms that reduce corrections systems while maintaining public safety.

Time Credits for Good Behavior

We endorse offset proposals offered in the President’s budget request last year that would adjust the method of calculating good time credits for federal prisoners. Under the BOP’s interpretation of current law, the good time allocation only reduces a federal prison sentence to a maximum credit of 47 days per year, which is 7 days less than the 54 days intended. This decision results in unnecessary increases in prison sentences at significant cost. We urge Congress to clarify that the intent of the statute is to give offenders 54 days of credit per year. The Administration’s proposal to increase good time credits by 7 days, coupled with its proposal to adopt time credits that can be earned for successful participation in recidivism-reducing programs, such as education or occupational programming, is sound, and would be effective at enhancing rehabilitation efforts and limiting overcrowding.

16 Public Hearing, U.S. Sentencing Commission 32-33 (Feb. 16, 2012) (statement of Charles E. Samuels, Director of the Federal Bureau of Prisons), available at http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120215-16/Hearing_Transcript_20120216.pdf.

17 Hearing on Federal Bureau of Prisons FY 2013 Budget Request Before the House Comm. on Appropriations, Subcomm. on Commerce, Justice, Science, and Related Agencies, 112th Cong. 3 (March 6, 2012) (statement of Charles E. Samuels, Director of the Federal Bureau of Prisons), available at http://appropriations.house.gov/UploadedFiles/03.06.12_CJS_-_DOJ_-_Charles_Samuels_-_Testimony.pdf.

Home Confinement for Elderly Prisoners

The average cost of confining elderly people is between two and three times higher than for younger people.¹⁸ At the same time, aging is correlated with diminishing risk of recidivism. Incarcerating elderly people who no longer pose a threat to the community wastes enormous sums of federal resources and these costs will continue to rise as the elderly prison population grows. Over forty states have already embraced some version of a limited early release program for the elderly. Congress should reauthorize and expand the provision of the Second Chance Act that included a pilot program to allow for the home confinement of elderly people.

Proportionality in Sentencing

In October 2011, the U.S. Sentencing Commission (USSC) released a report to Congress, “Mandatory Minimum Penalties in the Federal Criminal Justice System,”¹⁹ which provides a comprehensive assessment of the impact of mandatory minimum penalties on federal sentencing. The Commission concluded that certain mandatory minimum penalties apply too broadly, are excessively severe, and are applied inconsistently in the federal system. The Commission found that partly as a result of the increase in mandatory minimums, the federal prison population and spending on federal prisons has exploded.

We were pleased that in his recent speech at Georgetown University, Senate Judiciary Chairman Patrick Leahy said that our nation’s reliance on mandatory minimums has been a “great mistake” and that we should eliminate them. We urge Congress to hold hearings on the findings of the Sentencing Commission’s report and in particular to consider the Commission’s criticism of mandatory minimums. Congress should examine those mandatory minimum penalties that are rarely used to determine whether they are necessary and appropriate, and also analyze and respond to the racial disparities documented in the imposition of mandatory penalties, considering the effect of prosecutorial discretion in this regard.

Finally, we urge you to support the elimination of mandatory minimum sentences for drug offenses. The excessive mandatory minimum sentences associated with drug offenses have led to an overrepresentation of people convicted of drug offenses in the federal criminal justice system. Restoring federal judicial discretion in drug cases by eliminating mandatory minimum sentences would allow people to receive punishments more proportional to the offense they committed and that better account for culpability. It would also save significant resources:

18 Anno, B.J., Graham, C., Lawrence, J.E., & Shansky, R. (2004). Correctional Healthcare: Addressing the needs of elderly, chronically ill, and terminally ill inmates. Washington, DC: U.S. Department of Justice, National Institute of Corrections. Available at <http://static.nicic.gov/Library/018735.pdf>.

19 U.S. Sentencing Commission, Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System 367-69 (2011), available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/2011031_RtC_Mandatory_Minimum.cfm.

according to CRS the cost to BOP to incarcerate an individual for a ten-year mandatory sentence is about \$260,000.

Conclusion

Our diverse organizations urge you to consider the numerous opportunities to limit spending on the federal prison system while protecting public safety. In short, we call on Congress to be “smart on crime.” Continuing to expand the federal prison system is counterproductive, and it will not increase public safety.

Sincerely,

A Better Way Foundation
AME Church Commission on Social Action
American Civil Liberties Union
A New PATH (Parents for Addiction Treatment & Healing)
Asian Law Caucus
Beyond Bars
Blacks in Law Enforcement of America
Brennan Center for Justice at NYU School of Law
Campaign for the Fair Sentencing of Youth
Charles Hamilton Houston Institute for Race and Justice at Harvard Law School
Civic Trust Public Lobbying Company
Church of Scientology National Affairs Office
Coalition for Juvenile Justice (CJJ)
College and Community Fellowship
Crossroads Bible Institute
Desiree Alliance
Direct Action for Rights and Equality
Disciples Justice Action Network
Drug Policy Alliance
Faith for Change
FAMM (Families Against Mandatory Minimums)
Friends Committee on National Legislation
Healing Communities
Human Rights Defense Center
Illinois Consortium on Drug Policy, Roosevelt University
Insight Prison Project
Institute of the Black World
International CURE
Justice Fellowship
Justice Not Jails
Justice Policy Institute
NAACP
National Advocacy Center of the Sisters of the Good Shepherd
National African American Drug Policy Coalition, Inc.

National Alliance of Faith and Justice
National Association of Criminal Defense Lawyers
National Association of Evangelicals
National Association of Social Workers (NASW)
National Disability Rights Network
National Organization of Black Law Enforcement Executives (NOBLE)
National Religious Campaign Against Torture
National Trust for the Development of African-American Men
NETWORK, A National Catholic Social Justice Lobby
New Evangelical Partnership for the Common Good
North Carolina Harm Reduction Coalition
Office of Restorative Justice, Archdiocese of Los Angeles
Open Society Policy Center
Prof. Mark Osler, Univ. of St. Thomas School of Law
Racial Justice Ministries
Safe Streets Arts Foundation/Prisons Foundation
Samuel DeWitt Proctor Conference
The Sentencing Project
Southern Harm Reduction and Drug Policy Network
StoptheDrugWar.org
Prof. Joseph B. Tulman, Univ. of the Dist. of Columbia David A. Clarke School of Law
Unitarian Universalist Association
United Church of Christ/Justice and Witness Ministries
United Methodist Church, General Board of Church and Society
Violence Prevention Coalition of Greater Los Angeles
Voices Of Community Activists & Leaders (VOCAL-NY)
Wesley Theological Seminary at Mt. Vernon Square
Wesley Urban Fellows
Women's ReEntry Network, Tucson, AZ

cc:

Hon. Eric H. Holder, Jr., Attorney General, U.S. Department of Justice
Mr. Charles E. Samuels, Jr., Director, Federal Bureau of Prisons
Mr. Jeffrey Zients, Deputy Director for Management, Office of Management and Budget
Members of the U.S. Senate Appropriations Committee
Members of the U.S. House of Representatives Appropriations Committee
Members of the U.S. Senate Judiciary Committee
Members of the U.S. House of Representatives Judiciary Committee